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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BRAYDEN STARK and JUDD OOSTYEN, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

PATREON, INC.,

Defendant.

Case No. 3:22-cv-03131-JCS

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: October 6, 2023

Time: 2:00 p.m.

Courtroom: D, 15th Floor

Judge: Hon. Joseph C. Spero

Pursuant to Civil Local Rule 16-10(d), Plaintiffs Brayden Stark and Judd Oostyen (“Plaintiffs”), and Defendant Patreon, Inc. (“Patreon”) (collectively, “the Parties”) hereby provide this Joint Case Management Statement in advance of the Court’s Case Management Conference scheduled for October 6, 2023.

**I. Developments Since the Last Case Management Statement:**

The Parties report the following developments in this action since their July 7, 2023, Joint Case Management Statement (ECF No. 68):

- A. The Court continued the Case Management Conference from July 14, 2023, to October 6, 2023 (ECF No. 69);
- B. The parties engaged in fact discovery as described in Sections II below;
- C. On September 22, 2023, the last day for fact discovery on the Constitutional Question, for purposes of Defendant’s Motion for Summary Judgment Re: Constitutional Question passed;
- D. On September 22, 2023, the Parties exchanged opening expert reports in connection with Defendant’s Motion for Summary Judgment Re: Constitutional Question.

**II. Discovery**

Discovery is ongoing. Plaintiffs deposed three of Patreon’s designees under Federal Rule of Civil Procedure 30(b)(6) on July 25, August 1, and September 28, 2023. Patreon is scheduled to depose Plaintiff Brayden Stark on October 4, and the parties are in the process of scheduling the deposition of Plaintiff Judd Oostyen.

The Parties have exchanged written discovery and are producing documents on a rolling basis. The Parties are continuing to meet and confer with respect to specific requests. Plaintiffs have asked that Patreon run additional search terms in several of its databases in response to Plaintiffs’ existing RFPs. Patreon has declined to do so and has stated that it believes Plaintiffs’ request that Patreon run additional search terms is unreasonable as to both timing and the overbreadth of the terms. Lead trial counsel for the parties conferred by video conference on September 29 with respect to both the Plaintiffs’ RFPs, and the second and third set of RFPs and first set of interrogatories that Patreon served on Plaintiffs. This September 29<sup>th</sup> video conference was the parties’ first meet and confer regarding Plaintiffs’ responses

1 and objections to Patreon’s second and third set of RFPs and first set of interrogatories. Plaintiffs are  
 2 considering the points raised by Patreon regarding their discovery responses during this conference.  
 3 Plaintiffs and Patreon anticipate submitting a Joint Letter in line with the Court’s Civil Standing Order if  
 4 they are unable to resolve their disputes.

5 Nonparty Meta Platforms, Inc. (“Meta”) made an initial production of documents in response to  
 6 Plaintiffs’ subpoena. Plaintiffs are conferring with Meta regarding that production and anticipate further  
 7 productions from Meta.

8 Defendant Patreon served subpoenas to third parties requesting the production of documents  
 9 related to the First Amendment briefing. These subpoenas include requests relating to the policies and  
 10 practices of the subpoenaed party regarding transmission of personally identifiable information to third  
 11 parties and/or law enforcement agencies. A number of the third parties – including the National Center  
 12 for Missing and Exploited Children and Meta – have produced declarations and/or documents in  
 13 response to Patreon’s subpoenas, and Patreon has provided these materials to Plaintiffs. Plaintiffs have  
 14 also served subpoenas, received responses, and have been serving those responses on Patreon.

15 Patreon served on intervenor the United States of America<sup>1</sup> requests for production of documents  
 16 and requests for admissions related to the First Amendment briefing. Patreon and the United States have  
 17 met and conferred in an effort to resolve disputes over the United States’ responses to these discovery  
 18 requests. Patreon and the United States anticipate submitting a Joint Letter in line with the Court’s Civil  
 19 Standing Order.

20 Patreon contends that the expert report of law professor Neil Richards that Plaintiffs served in  
 21 connection with Patreon’s First Amendment defense expresses inadmissible opinions on questions of  
 22 law. If Plaintiffs do not withdraw the report, Patreon expects that it will move to strike. Plaintiffs  
 23 disagree with Patreon’s contention that the expert report of law professor Neil Richards is inadmissible.

### 24 **III. Case Schedule**

25 The current case schedule is as follows (ECF No. 67):

- 26 • Rebuttal expert reports related to Constitutional Question: October 20, 2023

27  
 28 <sup>1</sup> The United States has intervened in this case for the purpose of defending the constitutionality of the  
 VPPA. (ECF No. 49).

- Last day for expert depositions related to Constitutional Question: November 3, 2023
- Defendant's Motion for Summary Judgment Re: Constitutional Question: November 17, 2023
- Plaintiffs' Opposition to Defendant's Motion for Summary Judgment Re: Constitutional Question: December 21, 2023
- Defendant's Reply In Support of its Motion for Summary Judgment Re: Constitutional Question: January 19, 2024
- Hearing on Defendant's Motion for Summary Judgment Re: Constitutional Question February 16, 2024
- Plaintiff's Motion for Class Certification: March 15, 2024

The United States has requested that the schedule in this case be modified such that summary judgment briefing on the constitutionality of the VPPA would be either combined with, or postdate, summary judgment briefing on any other subject. The government reached out to counsel for Plaintiffs and Defendant to confer about this request on September 28, 2023. Plaintiffs do not object to the United States' request to modify the schedule. Defendant's counsel has not yet had a sufficient opportunity to consider the government's request or to confer meaningfully with their client, but Defendant would likely oppose the request. The parties and the United States will endeavor to continue to meet and confer in advance of the CMC and to be prepared to discuss the United States' request to modify the schedule during the CMC.

#### **IV. Settlement/ADR**

The Parties mediated with retired judge Jeremy Fogel on June 27, 2023, but did not reach agreement as to resolution. The parties are scheduled to mediate again with Judge Fogel on November 15, 2023.

Dated: September 29, 2023

By: /s/ Reid Gaa  
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Dated: September 29, 2023

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**FILER'S ATTESTATION**

I, Reid Gaa, am the ECF User whose ID and password are being used to file this document. In compliance with Civil L.R. 5-1(h)(3), I hereby attest that all counsel have concurred in this filing.

/s/ Reid Gaa